

2003 DRAFTING REQUEST

Bill

Received: **11/06/2003**

Received By: **gmalaise**

Wanted: **Soon**

Identical to LRB:

For: **John Gard (608) 266-3387**

By/Representing: **John Montgomery**

This file may be shown to any legislator: **NO**

Drafter: **gmalaise**

May Contact:

Addl. Drafters:

Subject: **Higher Education - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Gard@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

College savings program; permit contracting with more than one manager

Instructions:

See Attached--permit DOA to contract with more than one nongovernmental manager for the college savings program.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 11/08/2003	jdyer 11/10/2003 jdyer 11/10/2003		_____			State
/1			rschluet	_____	sbasford		State

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Rep. Montgomery
per GMM

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Page 1

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/1			rschluet	_____	sbasford		State

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For: John Gard (608) 266-3387

By/Representing: ~~John Montgomery~~
Jeff Schwenfelt

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15-62-103. Definitions. As used in this chapter, the following definitions apply:

- (1) "Account" means an individual trust account or savings account established under this chapter.
- (2) "Account owner" means the person designated at the time that an account is opened as having the right to withdraw money from the account before the account is disbursed to or for the benefit of the designated beneficiary.
- (3) "Board" means the board of regents of higher education established by Article X, section 9, subsection (2), of the Montana constitution and 2-15-1505.
- (4) "Committee" means the family education savings program oversight committee established in 20-25-901.
- (5) "Designated beneficiary" means, with respect to an account, the person designated at the time that the account is opened as the person whose higher education expenses are expected to be paid from the account or if this person is replaced in accordance with 15-62-202, the individual replacing the former designated beneficiary.
- (6) "Financial institution" means any bank, ~~commercial bank, national bank~~, savings bank, savings and loan association, credit union, insurance company, trust company, investment adviser, or other similar entity that is authorized to do business in this state.
- (7) "Higher education institution" means an eligible educational institution as defined in section 529(e)(5) of the Internal Revenue Code, 26 U.S.C. 529(e)(5).
- (8) "Investment products" means, without limitation, certificates of deposit, savings accounts paying fixed or variable interest, financial instruments, one or more mutual funds, and a mix of mutual funds.
- (9) "Member of the family" means, with respect to a designated beneficiary, a member of the family of the designated beneficiary as defined in section 529(e)(2) of the Internal Revenue Code, 26 U.S.C. 529(e)(2).
- (10) "Nonqualified withdrawal" means a withdrawal from an account that is not:
 - (a) a qualified withdrawal;
 - (b) a withdrawal made as the result of the death or disability of the designated beneficiary of an account;
 - (c) a withdrawal that is made on the account of a scholarship or the allowance or payment described in section 135(d)(1)(B) or (d)(1)(C) of the Internal Revenue Code, 26 U.S.C. 135(d)(1)(B) or (d)(1)(C), and that is received by the designated beneficiary; or
 - (d) a rollover or change of designated beneficiary described in 15-62-202.
- (11) "Program" means the family education savings program established pursuant to 15-62-201. The program must be structured to permit the long-term accumulation of savings that can be used to finance all or a share of the costs of higher education.
- (12) "Qualified higher education expenses" means qualified higher education expenses as defined in section 529(e)(3) of the Internal Revenue Code, 26 U.S.C. 529(e)(3).
- (13) "Qualified withdrawal" means a withdrawal from an account to pay the qualified higher education expenses of the designated beneficiary of the account.

History: En. Sec. 3, Ch. 540, L. 1997; amd. Sec. 5, Ch. 468, L. 2001; amd. Sec. 2, Ch. 566, L. 2003.

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15-62-201. Program requirements -- application -- establishment of account -- qualified and nonqualified withdrawal -- penalties. (1) A person who wishes to deposit money into an account to pay the qualified higher education expenses of a designated beneficiary shall:

(a) complete an application on the form prescribed by the board that includes:

(i) the name, address, and social security number or employer identification number of the contributor;

(ii) the name, address, and social security number of the account owner if the account owner is not the contributor;

(iii) the name, address, and social security number of the designated beneficiary;

(iv) the certification relating to no excess contributions adopted by the board pursuant to 20-25-902; and

(v) any other information required by the board;

(b) pay the one-time application fee established by the board;

(c) make the minimum contribution required by the board or by opening an account; and

(d) designate the type of account to be opened if more than one type of account is offered.

(2) A person shall make contributions to an opened account in cash.

(3) An account owner may withdraw all or part of the balance from an account under rules prescribed by the board. The rules must be used to help the board or program manager to determine if a withdrawal is a nonqualified withdrawal or a qualified withdrawal to the extent that the board concludes that it is necessary for the board or program manager to make that determination. The rules may require that:

(a) account owners seeking to make a qualified withdrawal or other withdrawal that is not a nonqualified withdrawal shall provide certifications, copies of bills for qualified higher education expenses, or other supporting material;

(b) qualified withdrawals from an account be made only by a check payable jointly to the designated beneficiary and a higher education institution; and

(c) withdrawals not meeting certain requirements be treated as nonqualified withdrawals by the program manager, and if these withdrawals are not nonqualified withdrawals, the account owner shall seek refunds of penalties directly from the board.

(4) If the board determines that it is required to impose a penalty on nonqualified withdrawals for the program to qualify as a qualified state tuition program or a qualified tuition program under section 529 of the Internal Revenue Code, 26 U.S.C. 529, the board may impose a penalty in an amount equal to 10% of the portion of the proposed withdrawal that would constitute income as determined in accordance with section 529 of the Internal Revenue Code, 26 U.S.C. 529. The penalty must be withheld and paid to the board for use in operating and marketing the program and for state student financial aid.

(5) The board, by rule, shall increase the percentage of the penalty prescribed in subsection (4) or change the basis of this penalty if the board determines that the amount of the penalty must be increased to constitute a minimum penalty for purposes of qualifying the program as a qualified state tuition program or a qualified tuition program under section 529 of the Internal Revenue Code, 26 U.S.C. 529.

(6) The board may decrease the percentage of the penalty prescribed in subsection (4) if:

(a) the penalty is greater than is required to constitute a minimum penalty for purposes of qualifying the program as a qualified state tuition program or qualified tuition program under section 529 of the Internal Revenue Code, 26 U.S.C. 529; or

(b) the penalty, when combined with other revenue generated under this chapter, is producing more revenue than is required to cover the costs of operating and marketing the program and to recover any

costs not previously recovered.

(7) If an account owner makes a nonqualified withdrawal and a penalty imposed under subsection (4) is not withheld pursuant to subsection (4) or the amount withheld was less than the amount required to be withheld under that subsection for nonqualified withdrawals, the account owner shall pay:

(a) the unpaid portion of the penalty to the board at the same time that the account owner files a federal and state income tax return for the taxable year of the withdrawal; or

(b) if the account owner does not file a return, the unpaid portion of the penalty on the due date for federal and state income tax returns, including any authorized extensions.

(8) Each account must be maintained separately from each other account under the program.

(9) Separate records and accounting must be maintained for each account for each designated beneficiary.

(10) A contributor to, account owner of, or designated beneficiary of an account may not direct the investment of any contributions to any account or the earnings generated by the account and may not pledge the interest of an account or use an interest in an account as security for a loan.

4,64
(2)(g)
(11) If, pursuant to 15-62-203(10), the board terminates the authority of a financial institution to serve as program manager and accounts held by or through the program manager must be moved from that financial institution to another financial institution, the board shall select the financial institution to which the accounts are to be moved. If as a result of the change, the investment products in which the accounts are invested must be changed, the board shall select new investment products for the accounts unless the account owner is permitted under the applicable rules of the internal revenue service to select new investments for the account without violating rules prohibiting investment direction.

(12) If there is any distribution from an account to any person or for the benefit of any person during a calendar year, the distribution must be reported to the internal revenue service and the account owner or the designated beneficiary to the extent required by federal law.

(13) The financial institution shall provide statements to each account owner at least once each year within 31 days after the 12-month period to which they relate. The statement must identify the contributions made during a preceding 12-month period, the total contributions made through the end of the period, the value of the account as of the end of this period, distributions made during this period, and any other matters that the board requires be reported to the account owner.

(14) Statements and information returns relating to accounts must be prepared and filed to the extent required by federal or state tax law or by administrative rule.

(15) A state or local government or organizations described in section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), may, without designating a designated beneficiary, open and become the account owner of an account to fund scholarships for persons whose identity will be determined after an account is opened.

History: En. Sec. 4, Ch. 540, L. 1997; amd. Sec. 6, Ch. 468, L. 2001; amd. Sec. 3, Ch. 566, L. 2003.

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15-62-202. Changes in designated beneficiary. (1) An account owner may change the designated beneficiary of an account to an individual who is a member of the family of the former designated beneficiary in accordance with procedures established by the board.

(2) If requested by an account owner, all or a portion of an account may be transferred to another account of which the designated beneficiary is a member of the family of the designated beneficiary of the transferee account.

(3) Changes in designated beneficiaries and rollovers under this section are not permitted if the changes or rollovers would violate:

- (a) the excess contributions provisions adopted by the board pursuant to 20-25-902; or
- (b) the investment choice provisions of 15-62-201(10).

History: En. Sec. 5, Ch. 540, L. 1997.

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15-62-203. Selection of financial institution as program manager -- contract -- termination. (1)

(1g) The board shall implement the program through the use of one or more financial institutions to act as the program manager. Under the program, a person may establish accounts ~~at the location of or~~ through the program manager. Accounts may be invested in one or more investment products approved by the board.

(2) The committee shall solicit proposals from financial institutions to act as managers of the program. Financial institutions that submit proposals shall describe the investment products that they propose to offer through the program.

(2) (3) On the recommendation of the committee, the board shall select as program managers the financial institution or institutions from among bidding financial institutions that demonstrate the most advantageous combination, both to potential program participants and to this state, of:

(CR) (g) (a) financial stability and integrity;

(h) (b) the safety of the investment products being offered, taking into account any insurance provided with respect to these products;

(i) (c) the ability of the investment products to track estimated costs of higher education as calculated by the board and provided by the financial institution to the account holder;

(d) the ability of the financial institutions, directly or through a subcontract, to satisfy recordkeeping and reporting requirements;

(e) the financial institution's plan for promoting the program and the investment that it is willing to make to promote the program;

(f) the fees, if any, proposed to be charged to persons for maintaining accounts;

(AM) (10e) (g) the minimum initial deposit and minimum contributions that the financial institution will require and the willingness of the financial institution or its subcontractors to accept contributions through payroll deduction plans and other deposit plans; and

(j) (h) any other benefits to this state or its residents contained in the proposal, including an account opening fee payable to the board by the account owner to cover expenses of operation of the program and any additional fee offered by the financial institution for statewide program marketing by the board.

(4) The board shall enter into a contract with a financial institution or, except as provided in subsection (5), into contracts with financial institutions to serve as program managers.

(5) The board may select more than one financial institution to serve as program manager. The board may select more than one kind of investment product to be offered through the program. Any decision on the use of multiple financial institutions or multiple investment products must take into account:

(a) the requirements for qualifying as a qualified state tuition program or qualified tuition program under section 529 of the Internal Revenue Code, 26 U.S.C. 529;

(b) differing needs of contributors regarding risk and potential return of investment instruments; and

(c) administrative costs and burdens that may be imposed as the result of the decision.

(6) A program manager or its subcontractor shall:

(a) take action required to keep the program in compliance with its contract or the requirements of this chapter to manage the program so that it is treated as a qualified state tuition program or qualified tuition program under section 529 of the Internal Revenue Code, 26 U.S.C. 529;

(b) keep adequate records of each account, keep each account segregated from each other account, and provide the board with the information necessary to prepare statements required by 15-62-201(12) through (14) or file these statements on behalf of the board;

(c) compile and total information contained in statements required to be prepared under 15-62-201

(12) through (14) and provide these compilations to the board;

(d) if there is more than one program manager, provide the board with the information to assist the board in determining compliance with rules adopted by the board pursuant to 20-25-902 and to comply with any state or federal tax reporting requirements;

(CR)
(3)(e) (e) provide representatives of the board, including other contractors or other state agencies, access to the books and records of the program manager to the extent needed to determine compliance with the contract. At least once during the term of any contract, the board, its contractor, or the state agency responsible for examination oversight of the program manager shall conduct an examination to the extent needed to determine compliance with the contract.

(f) hold all accounts in trust for the benefit of this state and the account owner.

(7) A person may not circulate any description of the program, whether in writing or through the use of any media, unless the board or its designee first approves the description.

(8) A contract executed between the board and a financial institution pursuant to this section must be for a term of at least 3 years and not more than 7 years.

(9) If a contract executed between the board and a financial institution pursuant to this section is not renewed, at the end of the term of the nonrenewed contract:

(a) accounts previously established may not be terminated;

(b) additional contributions may be made to the accounts in existence at the time of nonrenewal of a contract;

(c) new accounts may not be placed with that financial institution unless a new contract is executed; and

(d) except as provided in subsection (10), accounts under the supervision of the program manager must continue to be invested in the financial products in which they were invested prior to the nonrenewal.

(14, 64)
(2)(g) (10) The board may terminate a contract with a financial institution at any time for good cause on the recommendation of the committee. If a contract is terminated pursuant to this subsection, the board shall take custody of accounts held at that financial institution and shall seek to promptly transfer the accounts to another financial institution that is selected as a program manager and into investment products as similar as possible to the original investments.

History: En. Sec. 8, Ch. 540, L. 1997; amd. Sec. 7, Ch. 468, L. 2001; amd. Sec. 4, Ch. 566, L. 2003.

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20-25-901. Family education savings program oversight committee -- membership -- powers and duties. (1) There is a family education savings program oversight committee under the authority of the board.

(2) The committee consists of seven members appointed by the governor to staggered 4-year terms. The members must include:

- (a) the commissioner of insurance or the commissioner's designee;
- (b) the state treasurer or the state treasurer's designee;
- (c) the presiding officer of the board or the presiding officer's designee; and
- (d) four members of the general public, each of whom possesses knowledge, skill, and experience in accounting, risk management, or investment management or as an actuary.

(3) The committee shall select a presiding officer and a vice presiding officer from among the committee's membership.

(4) A majority of the membership constitutes a quorum for the transaction of business. The committee shall meet at least once a year, with additional meetings called by the presiding officer.

(5) The committee:

(a) shall recommend financial institutions for approval by the board to act as the managers of family education savings accounts pursuant to 15-62-201; and

(b) may submit proposed policies to the board to assist in the implementation and administration of Title 15, chapter 62.

(6) The committee is allocated to the board for administrative purposes only, as prescribed in 2-15-121.

(7) Members of the committee must be compensated as provided in 2-15-124.

(8) The definitions in 15-62-103 apply to this section.

History: En. Sec. 6, Ch. 540, L. 1997; amd. Sec. 53, Ch. 483, L. 2001; amd. Sec. 7, Ch. 566, L. 2003.

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20-25-902. Board -- powers and duties. (1) The board shall:

- (a) retain professional services, if necessary, including services of accountants, auditors, consultants, and other experts;
- (b) seek rulings and other guidance relating to the program from the United States department of the treasury and the internal revenue service;
- (c) make changes to the program as required for the participants in the program to obtain the federal income tax benefits or treatment provided by section 529 of the Internal Revenue Code, 26 U.S.C. 529, as amended;
- (d) charge, impose, and collect administrative fees and service charges pursuant to any agreement, contract, or transaction relating to the program;
- (e) select the financial institution or institutions to act as the manager of the program pursuant to 15-62-203;

(f) on the recommendation of the committee, adopt rules to prevent contributions on behalf of a designated beneficiary in excess of those necessary to pay the qualified higher education expenses of the designated beneficiaries. The rules must address the following:

(i) procedures for aggregating the total balances of multiple accounts established for a designated beneficiary;

(ii) the establishment of a maximum total balance that may be held in accounts for a designated beneficiary;

(iii) requirements that persons who contribute to an account certify that to the best of their knowledge, the balance in all qualified state tuition programs, as defined in section 529 of the Internal Revenue Code, 26 U.S.C. 529, for the designated beneficiary does not exceed the lesser of:

(A) a maximum college savings amount established by the board; or

(B) the cost in current dollars of qualified higher education expenses that the contributor reasonably anticipates the designated beneficiary will incur;

(iv) requirements that any excess balances with respect to a designated beneficiary be promptly withdrawn in a nonqualified withdrawal or rolled over to another account in accordance with this section; and

(g) adopt procedures as necessary to implement Title 15, chapter 62.

(2) The definitions in 15-62-103 apply to this section.

History: En. Sec. 7, Ch. 540, L. 1997; amd. Sec. 8, Ch. 566, L. 2003.

Provided by Montana Legislative Services



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-3672/M

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MON 11/16

AN ACT ^{Gen} relating to: the selection of one or more financial institutions to serve as vendors of the college savings program and granting rule-making authority.

Analysis by the Legislative Reference Bureau

Under current law, the College Savings Program Board (board) administers a college savings program, commonly referred to as "EdVest," under which a person may establish and contribute money to a college savings account to cover tuition, fees, and the costs of room and board, books, supplies, and equipment required for the enrollment or attendance of a beneficiary at an accredited institution of higher education anywhere in the United States. Under current law, the Department of Administration (DOA) is required to select a nongovernmental person to serve as the vendor of EdVest based on factors determined by DOA, including certain factors specified under current law.

This bill permits DOA to select more than one financial institution, which is defined in the bill as a bank, savings bank, savings and loan association, credit union, insurance company, trust company, investment adviser, or any other similar entity that is authorized to do business in this state, to serve as vendors of EdVest. The bill also permits the board to approve more than one kind of investment instrument to be offered through EdVest. Under the bill, any decision on the use of multiple financial institutions to serve as vendors of EdVest or multiple investment instruments to be offered under EdVest shall take into account the requirements for qualifying as a qualified tuition program under the Internal Revenue Code, differing needs of account owners regarding the risk and potential return of different investment instruments, and the administrative costs and burdens that may result from the decision.

The bill also requires DOA to select as vendors of EdVest the financial institutions or institutions that demonstrate the most advantageous combination,

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to account owners, beneficiaries, and this state, of the factors determined by DOA, including certain additional factors specified in the bill. Those additional factors are as follows:

1. The financial stability and integrity of the financial institution.
2. The safety of the investment instruments being offered by the financial institution, taking into account any insurance provided with respect to those investment instruments.
3. The ability of the investment instruments being offered by the financial institution to track future higher education costs as estimated by the board.✓
4. Any other benefits to account owners, beneficiaries, and this state offered by the financial institution.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 14.64 (2) (e) of the statutes is amended to read:

14.64 (2) (e) Promulgate rules to implement and administer this section, including rules that determine whether a withdrawal from a college savings account is a qualified or nonqualified withdrawal, as defined under 26 USC 529, and rules that impose more than a de minimis penalty, as defined under 26 USC 529, for nonqualified withdrawals, and rules to prevent contributions on behalf of a beneficiary that are in excess of those necessary to pay the qualified higher education expenses, as defined in 26 USC 529 (e) (3), of the beneficiary.✓

History: 1999 a. 44; 2001 a. 7, 38.

SECTION 2. 14.64 (2) (g) of the statutes is amended to read:

* 14.64 (2) (g) Ensure that ²if the department of administration ~~changes vendors~~ terminates the authority of a financial institution to serve as a vendor✓ of the college savings program, the balances of the college savings accounts held by that financial institution are promptly transferred to another financial institution that has been selected by the department of administration [✓] to serve as a vendor of the college

savings program and are transferred into investment instruments that are as similar to the original investment instruments as possible.

History: 1999 a. 44; 2001 a. 7, 38.

SECTION 3. 16.255 (title) of the statutes is amended to read:

16.255 (title) College savings program ~~vendor~~ vendors.

History: 1999 a. 44; 2001 a. 38 s. 12.

SECTION 4. 16.255 (1) of the statutes is renumbered 16.255 (1m) and amended to read:

16.255 (1m) The department shall determine the factors to be considered in selecting ~~a vendor of the program under s. 14.64~~ financial institutions to serve as vendors of the college savings program, which shall include:

(a) The person's ability of the financial institution to satisfy record-keeping and reporting requirements.

(b) The fees, if any, that the ~~person~~ financial institution proposes to charge account owners.

(c) The person's plan of the financial institution for promoting the college savings program and the investment that the ~~person~~ financial institution is willing to make to promote the college savings program.

(d) The minimum initial contribution or minimum contributions that the ~~person~~ financial institution will require.

(e) The ability and willingness of the ~~person~~ financial institution to accept ~~electronic~~ contributions electronically, through payroll deduction plans, and through other deposit plans.

(f) The ability of the ~~person~~ financial institution to augment the college savings program with additional, beneficial services related to the college savings program.

History: 1999 a. 44; 2001 a. 38 s. 12.

SECTION 5. 16.255 (1d) of the statutes is created to read:

16.255 (1d) In this section:

(a) "Board" means the college savings program board.

(b) "College savings program" means the college savings program under s. 14.64.

(c) "Financial institution" means a bank, savings bank, savings and loan association, credit union, insurance company, trust company, investment adviser, or any other similar entity that is authorized to do business in this state.

SECTION 6. 16.255 (1g) of the statutes is created to read:

16.255 (1g) The board shall implement the college savings program through the use of one or more financial institutions selected by the department under sub. (2) to serve as vendors for the college savings program. Under the college savings program, an individual, trust, legal guardian, or entity described under 26 USC 529 (e) (1) (C) may establish a college savings account through any vendor selected by the department and may invest that account in one or more investment instruments approved by the board.

SECTION 7. 16.255 (1m) (g) of the statutes is created to read:

16.255 (1m) (g) The financial stability and integrity of the financial institution.

SECTION 8. 16.255 (1m) (h) of the statutes is created to read:

16.255 (1m) (h) The safety of the investment instruments being offered by the financial institution, taking into account any insurance provided with respect to those investment instruments.

SECTION 9. 16.255 (1m) (i) of the statutes is created to read:

16.255 (1m) (i) The ability of the investment instruments being offered by the financial institution to track future higher education costs as estimated by the board.

SECTION 10. 16.255 (1m) (j) of the statutes is created to read:

16.255 (1m) (j) Any other benefits to account owners, beneficiaries, and this state offered by the financial institution.

SECTION 11. 16.255 (2) ^X of the statutes is renumbered 16.255 (2) (intro.) [✓] and amended to read:

16.255 (2) (intro.) The department shall solicit competitive sealed proposals under s. 16.75 (2m) from ~~nongovernmental persons~~ financial institutions to serve as ~~vender~~ vendors of the college savings program. The department shall select ~~the vender based upon~~ as vendors of the college savings program the financial institutions or financial institutions that demonstrate the most advantageous combination, to account owners, beneficiaries, and this state, of the factors determined by the department under sub. (1), (1m). [✓] The department may select more than one financial institution to serve as vendors of the college savings program, and the board may approve more than one kind of investment instrument to be offered through the college savings program. Any decision on the use of multiple financial institutions to serve as vendors of the college savings program [✓] or multiple investment instruments to be offered under the college savings program [✓] shall take into account all of the following: [✓]

History: 1999 a. 44; 2001 a. 38 s. 12.

SECTION 12. 16.255 (2) (a) ^X of the statutes is created to read:

16.255 (2) (a) The requirements for qualifying as a qualified tuition program under 26 USC 529.

SECTION 13. 16.255 (2) (b) ^X of the statutes is created to read:

16.255 (2) (b) Differing needs of account owners regarding the risk and potential return of different investment instruments.

SECTION 14. 16.255 (2) (c) ^X of the statutes is created to read:

16.255 (2) (c) The administrative costs and burdens that may result from the decision.

^X
SECTION 15. 16.255 (3) (intro.) of the statutes is amended to read:

16.255 (3) (intro.) ~~The~~ ^A contract between the department and ~~the~~ ^a vendor shall ensure all of the following:

History: 1999 a. 44; 2001 a. 38 s. 12.

^X **SECTION 16.** 16.255 (3) (e) ^Y of the statutes is created to read:

16.255 (3) (e) That, if more than one vendor is selected under sub. (2), [✓] the vendor provide the board with information to assist the board in determining compliance with the rules promulgated by the board under s. [✓] 14.64 (2) (e) relating to excess contributions on behalf of a beneficiary.

^X
SECTION 17. 25.85 of the statutes is amended to read:

25.85 College savings program trust fund. There is established a separate nonlapsible trust fund designated as the college savings program trust fund, consisting of all revenue from enrollment fees for and contributions to college savings accounts under s. 14.64 and from distributions and fees paid by ~~the~~ [✓] ~~a~~ vendor under s. 16.255 (3).

History: 2001 a. 7.

(END)

Malaise, Gordon

From: Malaise, Gordon
Sent: Monday, November 17, 2003 4:08 PM
To: Mathy, Michael
Subject: RE: EdVest Legislation

Michael:

I will go ahead and make the changes recommended by DFI.

As for your question whether the legislation would supercede the contract, both the U.S. and Wisconsin constitutions have impairment of contract clauses, which prohibit legislation that would impair a preexisting contract. Accordingly, the contract will supercede the legislation until the contract expires or is extended, modified, or renewed.

In drafting we come across this problem all the time, for example, in legislation that would impair a preexisting collective bargaining agreement. We address the issue by drafting an initial applicability provision that provides essentially as follows:

"INITIAL APPLICABILITY. This act first applies to a contract that conflicts with this act on the date on which the contract expires or is extended, modified, or renewed."

This initial applicability provision will address either scenario, i.e., the draft will take effect either when the Strong contract expires or when Strong and DOA modify the exclusive vendor provisions of the contract so as to permit the state to contract with other vendors.

Gordon

-----Original Message-----

From: Mathy, Michael
Sent: Monday, November 17, 2003 3:36 PM
To: Malaise, Gordon
Subject: EdVest Legislation

Gordon:

We submitted LRB 3672/1 to DFI for comment and they responded with several slight concerns relating to the definition of "financial institutions"

They suggested:

- Substitute the word "vendor" for financial institution and use the same terminology currently used to define "financial institution"
- Include the term "investment company" in the definition of vendor
 - DFI says a 1940 act makes an "investment company" an individual entity and outside of the current definition of financial institution

Section 4

- In section 4, DFI suggests changing all instances of "financial institution" to vendor and cross-referencing the definition to Section 5 of the legislation.

Please incorporate these suggestions into the legislation and create LRB 3672/2

Also, I am sending over a copy of the EdVest contracts for your review. I have scanned the documents and have been unable to determine what affect this legislation will have on the existing contract.

Would this legislation supercede the contract?

If not, and if possible under the contract, we would like to incorporate the following concepts into LRB 3672/2 as well:

- An effective date following the termination of the EdVest contract
- Require DOA to obtain written permission from Strong to add additional vendors until the exclusive contract ends

Please let me know if you have any questions or concerns you may have.

Thanks for all of your help on this matter.

Mike Mathy
Legislative Assistant
Office of Representative Phil Montgomery
129 West, State Capitol
Tel: 608.266.5841

11/19

2003 BILL

Vendor of EdVest. The bill also defines "vendor"

2 RMR

Reger

- 1 AN ACT *to renumber and amend* 16.255 (1) and 16.255 (2); *to amend* 14.64 (2)
- 2 (e), 14.64 (2) (g), 16.255 (title), 16.255 (3) (intro.) and 25.85; and *to create*
- 3 16.255 (1d), 16.255 (1g), 16.255 (1m) (g), 16.255 (1m) (h), 16.255 (1m) (i), 16.255
- 4 (1m) (j), 16.255 (2) (a), 16.255 (2) (b), 16.255 (2) (c) and 16.255 (3) (e) of the
- 5 statutes; **relating to:** the selection of one or more financial institutions to serve
- 6 as vendors of the college savings program and granting rule-making authority.

Analysis by the Legislative Reference Bureau

NO # In addition, the

Under current law, the College Savings Program Board (board) administers a college savings program, commonly referred to as "EdVest," under which a person may establish and contribute money to a college savings account to cover tuition, fees, and the costs of room and board, books, supplies, and equipment required for the enrollment or attendance of a beneficiary at an accredited institution of higher education anywhere in the United States. Under current law, the Department of Administration (DOA) is required to select a nongovernmental person to serve as the vendor of EdVest based on factors determined by DOA, including certain factors specified under current law.

This bill permits DOA to select more than one ~~financial institution~~, which is ~~defined in the bill~~ as a bank, savings bank, savings and loan association, credit union, insurance company, trust company, investment company, investment adviser, or any other similar entity that is authorized to do business in this state, ~~to serve as vendors of EdVest.~~ ~~The bill~~

and that provides or proposes to provide administrative, investment management, and sales, ~~marketing~~ marketing services for and distribution

BILL

~~also~~ permits the board to approve more than one kind of investment instrument to be offered through EdVest. Under the bill, any decision on the use of multiple ~~financial institutions to serve as~~ vendors of EdVest or multiple investment instruments to be offered under EdVest shall take into account the requirements for qualifying as a qualified tuition program under the Internal Revenue Code, differing needs of account owners regarding the risk and potential return of different investment instruments, and the administrative costs and burdens that may result from the decision.

The bill also requires ~~DOA to select as vendors of EdVest the financial institutions or institutions~~ ^{vendor or vendors} that demonstrate the most advantageous combination, to account owners, beneficiaries, and this state, of the factors determined by DOA, including certain additional factors specified in the bill. Those additional factors are as follows:

- (use 4x) ✓
- Vendor
1. The financial stability and integrity of the ~~financial institution~~.
 2. The safety of the investment instruments being offered by the ~~financial institution~~, taking into account any insurance provided with respect to those investment instruments.
 3. The ability of the investment instruments being offered by the ~~financial institution~~ to track future higher education costs as estimated by the board.
 4. Any other benefits to account owners, beneficiaries, and this state offered by the ~~financial institution~~.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 14.64 (2) (e) ✓ of the statutes is amended to read:

2 14.64 (2) (e) Promulgate rules to implement and administer this section,
3 including rules that determine whether a withdrawal from a college savings account
4 is a qualified or nonqualified withdrawal, as defined under 26 USC 529, and rules
5 that impose more than a de minimis penalty, as defined under 26 USC 529, for
6 nonqualified withdrawals, and rules to prevent contributions on behalf of a
7 beneficiary that are in excess of those necessary to pay the qualified higher education
8 expenses, as defined in 26 USC 529 (e) (3), of the beneficiary.

9 SECTION 2. 14.64 (2) (g) ✓ of the statutes is amended to read:

BILL

Vendor, as defined in s. 16.255 (1d)

Vendor

1 14.64 (2) (g) Ensure that, if the department of administration changes vendors
2 terminates the authority of a financial institution to serve as a vendor of the college
3 savings program, the balances of the college savings accounts held by that financial
4 institution are promptly transferred to another financial institution that has been
5 selected by the department of administration to serve as a vendor of the college
6 savings program and are transferred into investment instruments that are as
7 similar to the original investment instruments as possible.

8 SECTION 3. 16.255 (title) of the statutes is amended to read:

9 16.255 (title) College savings program vendor vendors.

10 SECTION 4. 16.255 (1) of the statutes is renumbered 16.255 (1m) and amended
11 to read:

Vendors under sub. (2)

12 16.255 (1m) The department shall determine the factors to be considered in
13 selecting a vendor of the program under s. 14.64 ~~financial institutions to serve as~~
14 ~~vendors of the college savings program~~, which shall include:

15 (a) The person's ability of the ~~financial institution~~ to satisfy record-keeping
16 and reporting requirements.

17 (b) The fees, if any, that the person ~~financial institution~~ proposes to charge
18 account owners.

19 (c) The person's plan of the ~~financial institution~~ for promoting the college
20 savings program and the investment that the person ~~financial institution~~ is willing
21 to make to promote the college savings program.

22 (d) The minimum initial contribution or minimum contributions that the
23 person ~~financial institution~~ will require.

Vendor

(use 5x)

BILL

(use 2x) ✓
Vendor
(e) The ability and willingness of the person ~~financial institution~~ to accept electronic contributions electronically, through payroll deduction plans, and through other deposit plans.

(f) The ability of the person ~~financial institution~~ to augment the college savings program with additional, beneficial services related to the college savings program. ✓

SECTION 5. 16.255 (1d) of the statutes is created to read:

16.255 (1d) In this section:

(a) "Board" means the college savings program board.

(b) "College savings program" means the college savings program under s. 14.64. Investment company, ← plain

(c) "Financial institution" means a bank, savings bank, savings and loan association, credit union, insurance company, trust company, investment adviser, or any other similar entity that is authorized to do business in this state.

SECTION 6. 16.255 (1g) ✓ of the statutes is created to read:

16.255 (1g) The board shall implement the college savings program through the use of one or more ~~financial institutions~~ selected by the department under sub.

(2) ~~to serve as vendors for the college savings program.~~ Under the college savings program, an individual, trust, legal guardian, or entity described under 26 USC 529

(e) (1) (C) may establish a college savings account through any vendor ✓ selected by the department and may invest that account in one or more investment instruments approved by the board.

SECTION 7. 16.255 (1m) (g) ✓ of the statutes is created to read:

16.255 (1m) (g) The financial stability and integrity of the ~~financial institution~~. ✓ Vendor

SECTION 8. 16.255 (1m) (h) ✓ of the statutes is created to read:

④ (d) "Vendor" means a financial institution that provides or proposes to provide administrative, investment management, and sales, marketing, and ✓ distribution services for the college savings program. ✓

BILL

1 16.255 (1m) (h) The safety of the investment instruments being offered by the
2 ~~financial institution~~, taking into account any insurance provided with respect to
3 those investment instruments.

4 SECTION 9. 16.255 (1m) (i) of the statutes is created to read:

5 16.255 (1m) (i) The ability of the investment instruments being offered by the
6 ~~financial institution~~ to track future higher education costs as estimated by the board.

7 SECTION 10. 16.255 (1m) (j) of the statutes is created to read:

8 16.255 (1m) (j) Any other benefits to account owners, beneficiaries, and this
9 state offered by the ~~financial institution~~ the vendor or vendors

10 SECTION 11. 16.255 (2) of the statutes is renumbered 16.255 (2) (intro.) and
11 amended to read: vendors and, from those proposals,

12 16.255 (2) (intro.) The department shall solicit competitive sealed proposals
13 under s. 16.75 (2m) from nongovernmental persons ~~financial institutions~~ to serve as
14 vendor ~~vendors~~ of the college savings program. The department shall select the
15 vendor based upon as vendors of the college savings program the financial

16 ~~institutions or financial institutions~~ that demonstrate the most advantageous
17 combination, to account owners, beneficiaries, and this state, of the factors
18 determined by the department under sub. (1). (1m). The department may select more
19 than one ~~financial institution~~ to serve as vendors of the college savings program, and
20 the board may approve more than one kind of investment instrument to be offered
21 through the college savings program. Any decision on the use of multiple ~~financial~~
22 ~~institutions to serve as vendors of the college savings program~~ or multiple
23 investment instruments to be offered under the college savings program shall take
24 into account all of the following:

25 SECTION 12. 16.255 (2) (a) of the statutes is created to read:

BILL

1 16.255 (2) (a) The requirements for qualifying as a qualified tuition program
2 under 26 USC 529.

3 **SECTION 13.** 16.255 (2) (b) [✓] of the statutes is created to read:

4 16.255 (2) (b) Differing needs of account owners regarding the risk and
5 potential return of different investment instruments.

6 **SECTION 14.** 16.255 (2) (c) [✓] of the statutes is created to read:

7 16.255 (2) (c) The administrative costs and burdens that may result from the
8 decision.

9 **SECTION 15.** 16.255 (3) (intro.) [✓] of the statutes is amended to read:

10 16.255 (3) (intro.) The A contract between the department and the a vendor
11 shall ensure all of the following:

12 **SECTION 16.** 16.255 (3) (e) [✓] of the statutes is created to read:

13 16.255 (3) (e) That, if more than one vendor is selected under sub. (2), [✓] the
14 vendor provide the board with information to assist the board in determining
15 compliance with the rules promulgated by the board under s. 14.64 (2) (e) relating
16 to excess contributions on behalf of a beneficiary.

17 **SECTION 17.** 25.85 [✓] of the statutes is amended to read:

18 **25.85 College savings program trust fund.** There is established a separate
19 nonlapsible trust fund designated as the college savings program trust fund,
20 consisting of all revenue from enrollment fees for and contributions to college savings
21 accounts under s. 14.64 and from distributions and fees paid by the [✓]a vendor under
22 s. 16.255 (3).
23

(END)



2003

Nonstat File Sequence: **AAA**

LRB _____/_____/_____

NONSTAT SESSLAW

1. In the component bar:

For the action phrase, execute: create → action: → *NS: → nonstat

For the budget action phrase, execute: create → action: → *NS: → 91XX

For a subsection, execute: create → text: → *NS: → sub

For a paragraph, execute: create → text: → *NS: → par

For a subdivision, execute: create → text: → *NS: → subd

For a subdivision paragraph, execute: create → text: → *NS: → subpar

2. Nonstatutory subunits are numbered automatically. Fill in the SECTION # or subsection # only if a "frozen" number is needed. Below, for the budget, fill in the 9100 department code.

SECTION # 91 Nonstatutory provisions: 1

(#1) 1.....

(N) If a vendor, as defined in section 16.255 (1d) of the statutes, as created by this act, is subject to a contract that is in effect on the effective date of this subsection ✓ and that contains provisions that are inconsistent with section 16.255 of the statutes, as affected by this act, then, notwithstanding section 16.255 of the statutes, as affected by this act, the vendor may perform its obligations, and exercise its rights, ✓ under that contract until the contract expires, or is extended, modified, or renewed, whichever occurs first.

(END) ✓

Northrop, Lori

From: Mathy, Michael
Sent: Wednesday, November 19, 2003 10:36 AM
To: 'LRB.Legal@legis.state.wi.us.'
Subject: Jacketing Request - LRB 3672/2

We are requesting a bill jacket for LRB 3672/2.

Mike Mathy
Legislative Assistant
Office of Representative Phil Montgomery
129 West, State Capitol
Tel: 608.266.5841